



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,438	06/25/2003	Robert M. Batz	062891.1125	6343
5073	7590	09/23/2008		
BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980			EXAMINER COULTER, KENNETH R	
			ART UNIT 2141	PAPER NUMBER
			NOTIFICATION DATE 09/23/2008	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptomail1@bakerbotts.com  
glenda.orrantia@bakerbotts.com

# Office Action Summary

**Application No.**

10/606,438

**Applicant(s)**

BATZ ET AL.

**Examiner**

Kenneth R. Coulter

**Art Unit**

2141

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 8/27/08 (RCE filed).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-893)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 – 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Zisapel et al. (U.S. Pat. No. 6,249,801) (Load Balancing).

2.1 Regarding claim 1, Zisapel discloses an apparatus, comprising:

a load balancer operable to:

receive a packet included within a request that is associated with an end user  
(Abstract; Figs. 1A – 1C; col. 2, lines 20 – 39);

communicate the packet to a selected one of a plurality of gateways (Figs. 1A, 1B, 1C; Abstract; col. 1, lines 32 – 35 "load balancer is provided as a gateway"; col. 2, lines 20 – 39; col. 5, lines 9 – 28);

build an object that correlates an internet protocol (IP) address of the end user to the selected gateway, the object used to direct subsequently received packets for the end user to the selected gateway (Fig. 1B, items 24, 36; Abstract; col. 5, lines 9 – 28 and 44 – 57);

direct the subsequently received packets based on the object and end user IP address information included in the subsequently received packets (Fig. 1B, items 24, 36; Abstract; col. 5, lines 9 – 28 and 44 – 57);

track a user data flow according to the IP address of the object (Abstract; col. 5, lines 9 – 28 and 44 – 57); and

load balance the user data flow based on the tracking according to the IP address (Abstract; col. 5, lines 9 – 28 and 44 – 57).

2.2 Per claim 2, Zisapel teaches the apparatus of claim 1, wherein an **additional** load balancer may receive the packet and build an additional object that correlates the IP address associated with the end user to the selected gateway such that the additional object may be used to direct subsequently received additional packets associated with the end user to the selected gateway, the subsequently received additional packets being directed by the additional load balancer based on destination information included in the subsequently received additional packets (Figs. 1A, 1B, 1C; Abstract; col. 5, lines 9 – 28 and 44 – 57).

2.3 Regarding claim 3, Zisapel discloses the apparatus of claim 2, wherein the load balancers evaluate communication flows in one direction in order to direct the flows to the selected gateway based on a selected one of source and destination information (Fig. 1B, items 24, 36; col. 5, lines 9 – 28 and 44 – 57).

2.4 Per claim 4, Zisapel teaches the apparatus of claim 1, wherein the gateway is a selected one of a group of elements consisting of:

a firewall;

a switch;

an intrusion detection element;

gateway general packet radio service (GPRS) support node (GGSN);

a client service packet gateway (CSPG);

a packet data serving node (PDSN); and

a Layer-two tunneling protocol network server (LNS) (Abstract; col. 2, lines 15 – 39).

2.5 Regarding claim 5, Zisapel discloses the apparatus of claim 1, wherein the load balancer includes a table operable to store the object that correlates the IP address of the end user to the selected gateway (Fig. 1B, items 24, 36; col. 5, lines 9 – 28 and 44 – 57).

2.6 Per claim 6, Zisapel teaches the apparatus of claim 1, wherein the gateway performs per-host operations based on an identity associated with the end user (col. 5, lines 9 – 28 and 44 – 57).

2.7 Regarding claim 7, Zisapel discloses the apparatus of claim 1, wherein the load balancer includes one or more algorithms that may be used in order to determine which of the plurality of gateways is to receive the packet (col. 5, lines 9 – 28 and 44 – 57).

2.8 Per claims 8 – 22, the rejection of claims 1 – 7 under 35 USC 102(b) (paragraphs 2.1 – 2.7 above) applies fully.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1 – 22 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth R. Coulter whose telephone number is 571 272-3879. The examiner can normally be reached on M - F, 7:30 am - 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on 571 272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kenneth R Coulter/  
Primary Examiner, Art Unit 2141

/KRC/